EMPLOYMENT OF HANDICAPPED WORKERS IN SUPPORTED WORK MODELS UNDER THE FAIR LABOR STANDARDS ACT

This fact sheet summarizes how the Fair Labor Standards Act (FLSA) applies to the employment of workers with disabilities in community-based evaluation or training programs, particularly placements in supported work programs. The Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, is responsible for enforcing the FLSA.

What is supported work?

The Office of Special Education and Rehabilitative Services of the U.S. Department of Education funds supported work programs in all states as an alternative to segregated vocational rehabilitation work programs. In supported work programs, job coaches work with individuals with severe disabilities who are placed in competitive employment settings with workers who are nondisabled. The job coaches provide extensive training and actually perform the job where necessary.

What does the FLSA require?

The FLSA requires employers to:

-- pay all covered and nonexempt employees the minimum wage for all hours worked;

-- pay all covered and nonexempt employees at least one and one-half times their regular rates of pay for all hours worked over 40 in the workweek (employees of state and local public agencies may receive compensatory time off instead of overtime pay under certain conditions);

-- comply with child labor standards;

-- comply with recordkeeping requirements.

Who is an employee?

Employees are any individuals employed by an employer, regardless of whether or not they are disabled, or whether or not their productivity is impaired or
diminished by a disability. Employees may not waive their rights under the FLSA even where the employment is a part of a vocational evaluation or assessment program.

Are there special provisions under the FLSA for workers with disabilities?

Section 14 of the FLSA allows workers with disabilities to be employed at wage rates below the statutory minimum but commensurate with the workers' productivity. The commensurate wage is determined by comparing the productivity of a worker with a disability to the productivity expected of a nondisabled worker and applying that ratio to the prevailing wage rate paid such nondisabled workers in the vicinity for the type and quality of work being performed.

In order to pay a wage rate below the statutory minimum, an employer must have a certificate from the Regional Office of the Wage and Hour Division having administrative jurisdiction over the area in which the worker with a disability is to be employed. Because such certificates are not issued retroactively, the certificate must be obtained before employing a worker with a disability at less than the minimum wage. Employers who fail to obtain certificates or fail to pay commensurate wage rates will be held liable for additional wages found due their employees.

Who is a worker with a disability for purposes of Section 14?

Section 14 defines a worker with a disability as a person whose earning or productive capacity is impaired by a physical or mental disability, including those relating to age or injury. This definition includes blindness, mental illness, mental retardation, cerebral palsy, learning disabilities, alcoholism, and drug addiction. The definition does not include individuals who are vocationally, socially, culturally or educationally disabled; chronically unemployed; or who are welfare recipients, school dropouts, juvenile delinquents or parolees.

Are trainees and students considered employees?

All persons who may work without compensation for their own advantage on the premises of another are not necessarily employees. Whether trainees or students (including individuals participating in a supported work program) are employees under the FLSA will depend upon all of the circumstances surrounding their activities on the premises of the employer. Trainees or students would not be considered employees within the meaning of the FLSA if all of the following conditions are met:

-- the training (even though it includes the operation of the facilities of the employer) is similar to that which would be given in a vocational school;
-- the training is for the benefit of the trainees;

-- regular employees are not displaced, but closely observe the trainees;

-- the employer derives no immediate advantage from the activities of the trainees;

-- the trainees are not necessarily entitled to jobs after training; and

-- both the employer and trainees understand that the trainees are not entitled to wages.

For more information...

Contact the nearest office of the Wage and Hour Division, listed in most telephone directories under U.S. Government, Department of Labor, Employment Standards Administration.

This is one of a series of fact sheets highlighting U.S. Department of Labor Programs. It is intended as a general description only and does not carry the force of legal opinion.